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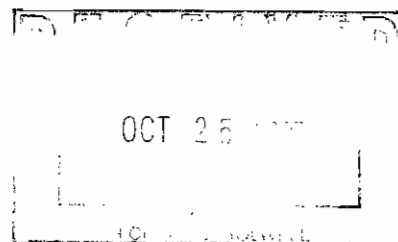
October 24, 2007

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Honorable Richard J. Holwell  
Judge, United States District Court for  
the Southern District of New York  
500 Pearl Street  
New York, NY 10007



Re: Napolitano v. Town Sports, Civil Action No. 07-6125

Dear Judge Holwell,

We take exception to defendant's letter to the Court of this date describing plaintiff as having "re-file[d] his motion" for summary judgment. The above-referenced case was transferred to the Southern District of New York from the Eastern District of Pennsylvania by order dated May 23, 2007. Our understanding of a transfer order is that it has no effect, whatsoever, upon the existing record in the case. The plaintiff's motion for summary judgment, with all attachments, was filed in the Eastern District of Pennsylvania on April 24, 2007, and was pending when the case arrived in this Court. It was not, in any sense, "re-filed."

The defendant notes that "[w]e had expected plaintiff to seek the pre-motion conference required by Rule 3.A of this Court if he desired to re-file his motion." We have difficulty understanding why the defendant harbored that expectation. The plaintiff's posting of his motion on ECF follows the defendant's having taken *exactly* the same action -- with respect to defendant's then-pending motion to dismiss in lieu of answer -- on July 24. Notably, the defendant did not seek a pre-motion conference under Your Honor's Rule 3A before posting its own dispositive motion on ECF (which made sense, because the motion was already of record), and now purports to criticize the plaintiff for having taken the same step.

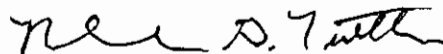
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Of course, the Court may wish to require the defendant to request a pre-motion conference under Rule 3A before the Court gives any further consideration to the defendant's pending motion to dismiss. Given the defendant's newfound concern for the policies implicit in that Rule, we think a pre-motion conference would be a good idea. We obviously do not believe that the defendant's "speaking demurrer" is properly supportable or appropriate on the current state of the pleadings, and would welcome an opportunity to make that case during conference. Obviously, we would be pleased to discuss the plaintiff's pending motion for summary judgment at the same time.

In all events, the signed stipulation attached to defendant's letter speaks for itself, and the plaintiff has never suggested, in any fashion, that he would insist that the defendant answer plaintiff's motion for summary judgment before an initial conference with the Court. For the reasons noted, we respectfully take this opportunity to request an initial conference in this matter, at Your Honor's convenience.

Respectfully,



Richard G. Tuttle

RGT:kh

cc: Jordan E. Stern, Esquire  
Counsel for Defendant

VIA FACSIMILE

Plaintiff's motion for  
summary judgment is  
deemed withdrawn and  
may be refused following (1)  
a decision on defendant's ~~motion~~  
motion to dismiss and (2)  
the holding of a pre-motion  
conference. **SO ORDERED**  
